

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 238 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

KARIMBHAI HAJI ABDULREHMAN

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner

Mr. A.J. Desai, APP for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/03/98

ORAL JUDGEMENT

Heard learned Advocate Mr. E.E. Saiyed for petitioner and learned APP Mr. A.J. Desai for respondent - State. Rule. Learned APP Mr. A.J. Desai waives service of rule.

2. The petitioner has approached to this court against the order passed by learned Sessions Judge, Kutchh - Bhuj dated 16th March, 1998 on the application -

Exhibit 14 moved in the proceedings of Session Case No. 55 of 1997.

3. It is the case of the petitioner that the incident had taken place before 12 years. Some of the material witnesses have expired and on account of delay, the evidence is likely to be lost. Under the circumstances, request was made by the applicant to the Sessions Court to expedite the proceedings of Session Case No. 55 of 1997, if possible, by day-to-day proceedings. Learned Sessions Judge appears to have passed a very lengthy order of 11 pages and had observed in para No.17 that present matter has been committed and forwarded to this court only on 15.3.1997. Under the circumstances, when other old cases are pending before this court, it would not be just and proper to give priority to the present matter and merely on the same reason, he as rejected the application.

4. It may be noted that the petitioner has averred in the application that the accused of said Session Case No. 55 of 1997 had moved the High Court of Gujarat time and again on different matters. All such proceedings were dismissed. However, on account of such proceedings, when applications were moved before Sessions Court, the matter could not be committed on account of pendency of proceedings in the High Court. The learned Sessions Judge ought to have considered the fact averred in the application that two important witnesses have expired and incident being 12 years old, material evidence is likely to be lost and under the circumstances, Sessions Judge ought to have expedited the proceedings. In view of the same, the order passed by the learned Sessions Judge, Kutchh - Bhuj dated 16th March, 1998 deserves to be set aside and quashed and appropriate direction is given.

5. On the basis of the above stated discussion, the impugned order dated 16th March, 1998, passed by the learned Sessions Judge, Kutchh - Bhuj below Exhibit 14 in the proceedings of Session Case No. 55 of 1997 is hereby set aside and quashed. Sessions Judge is directed to give top priority to the proceedings of Session Case No. 55 of 1997 and preferably to conduct the same or to entrust to a competent court who could proceed with the Sessions Case on day-to-day basis and complete the same as early as possible. Rule is made absolute. No order as to costs. Writ be sent to the Sessions Court forthwith.

p.n.nair

